

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Matthew C. Heidner; Thomas Holman
Application No.:	10/066994
Filed:	February 4, 2002
For:	Non-Removable Bonding Sleeve and Product Component
Examiner:	Vy Q. Bui
Group Art Unit:	3773

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-9090-US01

Request for Reconsideration of Patent Term Adjustment, 37 C.F.R. § 1.705

The patentee hereby requests reconsideration, under 35 U.S.C. § 154(b), of the Determination of Patent Term Adjustment (PTA) made by the Director as indicated on the Determination of Patent Term Adjustment form mailed on January 19, 2010.

This Request pertains to the calculation of the B type delay (three year delay days). Applicant is submitting this Request at this time rather than subsequent to the issue notification. This is believed to be proper because the B type delay days are calculable at present since an RCE was filed in this application subsequent to the three year date.

Determination of Patent Term Adjustment

As indicated on the Determination of Patent Term Adjustment form, attached hereto, the adjustment to patent term is 647 days. Also attached is the PAIR record showing the basis for this determination, which is believed to be incorrect.

The above referenced application was filed on February 2, 2002 and so is entitled to the benefit of the current version of 35 U.S.C. § 154. The PTA determination fails to follow the calculation method required by law as determined in *Wyeth v. Kappos*, 09-1120 (Fed. Cir. 2010), which is controlling law for the issues presented herein.

This Application for PTA constitutes a request that the patent term adjustment be made in accordance with the determination method described in the *Wyeth* case.

- (1) This request is accompanied by the fee set forth in 37 CFR § 1.18(c).
- (2) This request is being timely filed before payment of the issue fee as required under 37 C.F.R. § 1.705(b). This request can be filed prior to the issuance of the patent as the “three year” delay period ended at the time a request for continued examination was filed. Applicant submits this request prior to issuance in order to preserve Applicant’s right to a recalculation of the adjustment period since the requested adjustment is unaffected by the date of issuance.

(3) Statement of the facts involved:

- (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

USPTO delay days to the issuance of the first Office Action as indicated on PAIR	+ 453
Other delay days post-first Office Action as indicated by PAIR	+ 397
Total USPTO delay days as indicated by PAIR	= 850
Applicant’s delay days as indicated on PAIR	- 203
Non-overlapping three year days	+ 564
Correct Adjustment	= 1211

- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 647 days fails to properly include all of the USPTO delay days. As *Wyeth* establishes, this is improper. Applicant is entitled to an additional adjustment to the patent term based on the USPTO delay subsequent to the three year date (02/4/2005) and ending on the date that a first RCE was filed (08/1/2007).

The USPTO delayed 453 days between the 14 month date (04/4/2003) and the mailing date of the Restriction Requirement (06/30/2004), as indicated on PAIR.

The total USPTO delay days, as indicated by PAIR, is 850.

Applicant had 203 delay days as indicated by PAIR (32 + 27 + 91 + 53).

As such, PAIR indicates the PTA to be 647.

However:

There were 564 non-overlapping days between the 3 year date (02/4/2005) and the date the first RCE was filed (08/1/2007). None of those days are accounted for above as USPTO delay.

Applicant is entitled to an additional 564 days beyond the calculation on PAIR to account for the delays between the 3 year date (02/4/2005) and the date the first RCE was filed (08/1/2007).

The USPTO delayed 850 days as indicated by PAIR, the applicant delayed 203 days as indicated by PAIR (the sum of 32 + 27 + 91 + 53) and is entitled to 565 more days. Thus, the total adjustment that should have been shown in the Determination of Patent Term Adjustment is 1211 days ($850 - 203 + 564 = 1211$).

(iii) The patent is not subject to a terminal disclaimer.

(iv) (A) Applicant has included herewith a copy of the print-out from the USPTO's PAIR Patent Term Adjustment page for the above file. Applicant has not verified the USPTO's determination but accepts it for the purposes of this petition.

Furthermore, there were no delays due to secrecy orders or interferences in this application. An appeal was filed after the RCE date and is not believed to have any bearing on the above calculations.

All items required under 37 C.F.R. § 1.705 having been provided herein, the Applicant requests that the Patent Term Adjustment be corrected to show an adjustment of 1157 days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: April 19, 2010

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Patent Application Information Retrieval

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10/066,994 BONDING SLEEVE FOR MEDICAL DEVICE

Patent: New Case Application Date Invention Priority Image File Wrapper Patent Term Adjustment Publications Address & Attorney Agent

Patent Term Adjustment			
Filing or 371(c) Date:	02-04-2002	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pra-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total Patent Term Adjustment (days):	647
USPTO Adjustment (days):	-	Explanation Of Calculation:	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
01-19-2010	Mail Notice of Allowance		
01-15-2010	Document Verification		
01-15-2010	Notice of Allowance Data Verification Completed		
01-15-2010	Case Docketed to Examiner in GAU		
01-14-2010	Examiner's Amendment Communication		
11-03-2009	Appeal Brief Review Complete		
11-03-2009	Date Forwarded to Examiner		
10-20-2009	Appeal Brief Filed		
08-20-2009	Notice of Appeal Filed		
07-14-2009	Mail Final Rejection (PTOL - 326)		
07-14-2009	Final Rejection		
05-06-2009	Date Forwarded to Examiner		
03-25-2009	Response after Non-Final Action		
01-08-2009	Mail Non-Final Rejection		
01-05-2009	Non-Final Rejection		
11-25-2008	Date Forwarded to Examiner		
11-25-2008	Date Forwarded to Examiner		
11-17-2008	Request for Continued Examination (RCE)		53
11-25-2008	Disposal for a RCE / CPA / R129		⬆
11-17-2008	Request for Extension of Time - Granted		⬆
11-17-2008	Workflow - Request for RCE - Begin		⬆
09-29-2008	Mail Advisory Action (PTOL - 303)		⬆
09-26-2008	Advisory Action (PTOL-303)		⬆
09-25-2008	Date Forwarded to Examiner		⬆
09-12-2008	Amendment after Final Rejection		⬆
06-25-2008	Mail Final Rejection (PTOL - 326)		⬆
06-23-2008	Final Rejection		
03-27-2008	Date Forwarded to Examiner		
03-11-2008	Response after Non-Final Action		91
03-11-2008	Request for Extension of Time - Granted		⬆
08-01-2007	Information Disclosure Statement considered		⬆
08-01-2007	Information Disclosure Statement (IDS) Filed		⬆
10-26-2007	Case Docketed to Examiner in GAU		⬆
09-11-2007	Mail Non-Final Rejection		⬆
09-04-2007	Non-Final Rejection		
08-01-2007	Reference capture on IDS		

08-01-2007	Information Disclosure Statement (IDS) Filed		8
10-26-2007	Case Docketed to Examiner in GAU		8
09-11-2007	Mail Non-Final Rejection		8
09-04-2007	Non-Final Rejection		
08-01-2007	Reference capture on IDS		
08-01-2007	Electronic Information Disclosure Statement		
08-02-2007	Date Forwarded to Examiner		
08-01-2007	Request for Continued Examination (RCE)		27
08-02-2007	Disposal for a RCE/CPA/R129		8
08-01-2007	Request for Extension of Time - Granted		8
08-01-2007	Workflow - Request for RCE - Begin		8
07-25-2007	Mail Advisory Action (PTOL-303)		8
07-23-2007	Advisory Action (PTOL-303)		8
07-03-2007	Date Forwarded to Examiner		8
06-27-2007	Amendment after Final Rejection		8
04-05-2007	Mail Final Rejection (PTOL-326)	236	
04-02-2007	Final Rejection		8
04-17-2006	Case Docketed to Examiner in GAU		8
03-27-2006	Date Forwarded to Examiner		8
03-23-2006	Response after Non-Final Action		8
01-03-2006	Mail Supplemental Non-Final Action		
12-30-2005	Supplemental Non-Final Action		
10-19-2005	Mail Non-Final Rejection		
10-17-2005	Non-Final Rejection		
08-09-2005	Date Forwarded to Examiner		
08-02-2005	Response after Non-Final Action		
05-03-2005	Mail Non-Final Rejection	141	
05-02-2005	Non-Final Rejection		8
02-26-2005	Date Forwarded to Examiner		8
08-13-2004	Response to Election / Restriction Filed		32
08-13-2004	Election in Response to Notice of Final Determination		8
08-13-2004	Workflow incoming amendment IFW		8
08-10-2004	Workflow - File Sent to Contractor		8
07-30-2004	Mail Notice of Informal or Non-Responsive Amendment		8
07-29-2004	Date Forwarded to Examiner		8
07-12-2004	Informal or Non-Responsive Amendment after Examination		8
07-12-2004	Response to Election / Restriction Filed		8
07-29-2004	Workflow - File Sent to Contractor		
07-12-2004	Workflow incoming amendment IFW		
06-30-2004	Mail Restriction Requirement	453	
06-28-2004	Requirement for Restriction / Election		8
06-23-2004	Workflow - File Sent to Contractor		8
03-05-2004	IFW TSS Processing by Tech Center Complete		8
05-06-2002	Reference capture on IDS		8
05-06-2002	Information Disclosure Statement (IDS) Filed		8
05-06-2002	Information Disclosure Statement (IDS) Filed		8
03-30-2002	Case Docketed to Examiner in GAU		
02-28-2002	Application Dispatched from OIPE		8
02-22-2002	Application Is Now Complete		8
02-15-2002	IFW Scan & PACR Auto Security Review		8
02-04-2002	Initial Exam Team nn		8